

(3) There are no “hold harmless” provisions that apply to local area allocations of WIA dislocated worker funds.

(b)(1) If a State elects to apply a “hold-harmless” under paragraph (a)(1) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(2) In applying the “hold harmless” under paragraph (a)(2) of this section, a local area must not receive an allocation amount for a fiscal year that is less than 90 percent of the average allocation of the local area for the two preceding fiscal years.

(3) Amounts necessary to increase allocations to local areas must be obtained by ratably reducing the allocations to be made to other local areas.

(4) If the amounts of WIA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (b)(1) of this section to all local areas, the amounts allocated to each local area must be ratably reduced. (WIA secs. 128(b)(2)(A)(ii), 133(b)(2)(A)(ii), 506.)

§ 667.140 Does a Local Board have the authority to transfer funds between programs?

(a) A Local Board may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Before making any such transfer, a Local Board must obtain the Governor’s approval.

(c) Local Boards may not transfer funds to or from the youth program.

§ 667.150 What reallocation procedures does the Secretary use?

(a) The first reallocation of funds among States will occur during PY 2001 based on obligations in PY 2000.

(b) The Secretary determines, during the first quarter of the program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under WIA sections 127 and 132 for programs serving youth, adults, and dislocated workers for the prior year, as separately determined

for each of the three funding streams. Unobligated balances are determined based on allotments adjusted for any allowable transfer between the adult and dislocated worker funding streams. The amount to be recaptured from each State for reallocation, if any, is based on State obligations of the funds allotted to each State under WIA sections 127 and 132 for programs serving youth, adults, or dislocated workers, less any amount reserved (up to 5 percent at the State level and up to 10 percent at the local level) for the costs of administration. This amount, if any, is separately determined for each funding stream.

(c) The Secretary reallocates youth, adult and dislocated worker funds among eligible States in accordance with the provisions of WIA sections 127(c) and 132(c), respectively. To be eligible to receive a reallocation of youth, adult, or dislocated worker funds under the reallocation procedures, a State must have obligated at least 80 percent of the prior program year’s allotment, less any amount reserved for the costs of administration of youth, adult, or dislocated worker funds. A State’s eligibility to receive a reallocation is separately determined for each funding stream.

(d) The term “obligation” is defined at 20 CFR 660.300. For purposes of this section, the Secretary will also treat as State obligations:

(1) Amounts allocated by the State, under WIA sections 128(b) and 133(b), to the single State local area if the State has been designated as a single local area under WIA section 116(b) or to a balance of State local area administered by a unit of the State government, and

(2) Inter-agency transfers and other actions treated by the State as encumbrances against amounts reserved by the State under WIA sections 128(a) and 133(a) for Statewide workforce investment activities.

§ 667.160 What reallocation procedures must the Governors use?

(a) The Governor may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of sections 128(c) and 133(c) of the

Act. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. This amount, if any, must be separately determined for each funding stream.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 667.170 What responsibility review does the Department conduct for awards made under WIA title I, subtitle D?

(a) Before final selection as a potential grantee, we conduct a review of the available records to assess the organization's overall responsibility to administer Federal funds. As part of this review, we may consider any information that has come to our attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years). The responsibility tests include:

(1) The organization's efforts to recover debts (for which three demand letters have been sent) established by final agency action have been unsuccessful, or that there has been failure

to comply with an approved repayment plan;

(2) Established fraud or criminal activity of a significant nature within the organization.

(3) Serious administrative deficiencies that we identify, such as failure to maintain a financial management system as required by Federal regulations;

(4) Willful obstruction of the audit process;

(5) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance standards;

(6) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities;

(7) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted; final billings reflecting serious cost category or total budget cost overrun;

(8) Failure to submit required reports;

(9) Failure to properly report and dispose of government property as instructed by DOL;

(10) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand;

(11) Failure to ensure that a subrecipient complies with its OMB Circular A-133 audit requirements specified at § 667.200(b);

(12) Failure to audit a subrecipient within the required period;

(13) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgement of the grant officer, the disallowances are egregious findings and;

(14) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.

(b) This responsibility review is independent of the competitive process. Applicants which are determined to be not responsible will not be selected as potential grantees irrespective of their standing in the competition.